



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

July 13, 2007

David O. Stewart, Esq.  
Ropes & Gray  
700 12th Street, NW, Suite 900  
Washington, DC 20005-3948

RE: MUR 5919 (formerly Pre-MUR 444)  
Harrah's Entertainment, Inc.  
Rhode Islanders for Jobs and Tax Relief, Inc.

Dear Mr. Stewart:

On November 30, 2006, your clients, Harrah's Entertainment, Inc. ("Harrah's") and its wholly owned subsidiary, Rhode Islanders for Jobs and Tax Relief, Inc. ("RIJTR"), notified the Federal Election Commission that RIJTR may have made a corporate expenditure in violation of the Federal Election Campaign Act of 1971, as amended.

Upon further review of the information contained in your clients' submission, the Commission, on May 30, 2007, voted to dismiss this matter as to RIJTR. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information. A Statement of Reasons, further explaining the basis for the Commission's decision, will follow.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions regarding this matter, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan  
General Counsel

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", is written over the typed name of the Assistant General Counsel.

BY: Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Rhode Islanders for Jobs and Tax Relief, Inc. **MUR:** 5919

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8 **I. INTRODUCTION**

9 Harrah's Entertainment, Inc. ("Harrah's") and its wholly owned subsidiary, Rhode  
10 Islanders for Jobs and Tax Relief, Inc. ("RIJTR"), submitted the results of an internal  
11 investigation regarding a single RIJTR e-mail communication that advocated the election of a  
12 federal candidate during the 2006 election cycle.

13 Based on the reasons outlined below, the Commission opened a MUR and exercised its  
14 prosecutorial discretion to dismiss this matter as to RIJTR.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Facts**

17 RIJTR, a Rhode Island business corporation created and funded by Harrah's, was  
18 organized solely to advocate in favor of Rhode Island's Ballot Question No. 1, a proposal to  
19 amend Rhode Island's constitution to allow the Narragansett Tribe of Native Americans, in  
20 partnership with Harrah's, to establish a casino-resort project. RIJTR was controlled by an  
21 Executive Committee that consisted of two Harrah's employees, two representatives of the  
22 Narragansetts, an independent contractor named Paul Pezzella, who managed RIJTR's day-to-  
23 day operations, and several campaign consultants hired by Mr. Pezzella. Although Mr. Pezzella  
24 does not appear to have held a formal title as a corporate officer, his described duties and level of  
25 control over RIJTR suggest that he acted as a *de facto* corporate officer.

26 RIJTR claims its ballot initiative campaign was a nonpartisan effort, and that it  
27 established appropriate internal controls that forbid its employees and contractors from

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1 advocating for candidates or passing out partisan campaign literature or other election materials.

2 See November 30, 2006 Submission from RIJTR. RIJTR has represented that it provided its  
3 employees with election law compliance training, and that it required all employees and  
4 contractors, including Mr. Pezzella, to sign a statement acknowledging its policies prohibiting  
5 partisan election activity with regard to candidate elections. *Id.* at 2.

6 RIJTR's submission states that, despite its compliance efforts, Mr. Pezzella sent an e-  
7 mail on November 4, 2006, just three days before Rhode Island's November 7, 2006 general  
8 election to approximately 17,000 addressees on an RIJTR list that advocated the election of  
9 Democratic U.S. Senate candidate Sheldon Whitehouse (and a Democratic candidate for state  
10 office) and opposed the election of Republican U.S. Senator Lincoln Chafee (and a Republican  
11 candidate for state office). In pertinent part, the e-mail stated:

12 On November 7, 2006, let's put an end to the failed  
13 Republican policies of George Bush and Don Carcieri, and let's  
14 ensure a better and stronger Rhode Island by voting for Sheldon  
15 Whitehouse, Charlie Fogarty, and Question 1.

16 . . . .  
17 A vote for Chafee ensures a United States Senate that will  
18 continue to support policies that put our young men and women in  
19 the military at risk, reward fat cat contributors like Halliburton, raise  
20 our energy prices while guaranteeing billions in profits for the oil  
21 companies, destroy our environment, and continue to pit American  
22 versus American.

23 . . . .  
24 . . . . Please vote to elect Charlie Fogarty as Governor,  
25 Sheldon Whitehouse as United States Senator, and to approve  
26 Question 1, the Narragansett Indian Casino.  
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1 Pezzella apparently directed a subordinate, a campaign media consultant, to prepare the e-mail,  
2 which was then provided to a computer/technology consultant to the ballot initiative campaign  
3 for distribution to RIJTR's list of supporters.<sup>1</sup>

4 Within ninety minutes after the e-mail was issued, other RIJTR personnel recognized that  
5 Mr. Pezzella had violated the company's policy, and RIJTR promptly sent an e-mail to each  
6 recipient of the original e-mail retracting the endorsements and informing the approximately  
7 17,000 addressees that the prior e-mail was issued without RIJTR's authorization. The next day,  
8 November 5, 2006, RIJTR reprimanded Mr. Pezzella and reminded him of its nonpartisan policy  
9 and prohibitions against candidate endorsements. On the following day, November 6, 2006,  
10 RIJTR voluntarily contacted the Commission regarding the incident, and subsequently made a  
11 detailed submission accompanied by relevant documents.<sup>2</sup>

12 **B. Discussion**

13 The Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"),  
14 prohibits corporations from making any contribution or expenditure in connection with a Federal  
15 election. 2 U.S.C. § 441b(a); *see also* 11 C.F.R. §§ 114.2(a) and (b). The Act defines the term  
16 "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything  
17 of value made by any person for the purpose of influencing any election for Federal office.  
18 2 U.S.C. § 431(8)(A)(i). *See also* 11 C.F.R. § 114.1(a)(1). The term "expenditure" includes any  
19 purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,

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<sup>1</sup> According to RIJTR's submission, Mr. Pezzella reportedly stated that he did not recognize that these candidate endorsements were contrary to law.

<sup>2</sup> The ballot initiative received 37 percent of the vote. *See* Mark Peters, *Harrah's Loses Rhode Island Referendum*, Hartford Courant (Connecticut), November 9, 2006, at E2

made by any person for the purpose of influencing any election for Federal office. 2 U.S.C.

§ 431(9)(A)(i). *See also* 11 C.F.R. § 114.1(a)(1).

As a result of Mr. Pezzella's actions, RIJTR made, and Mr. Pezzella consented to, a corporate expenditure to expressly advocate the election of Sheldon Whitehouse, a candidate for the U.S. Senate, in violation of 2 U.S.C. § 441b(a).<sup>3</sup> As discussed below, however, the totality of the circumstances surrounding the violation, including RIJTR's compliance program, the unauthorized nature of Mr. Pezzella's actions, the prompt and complete corrective action, and the circumstances surrounding RIJTR's self disclosure of this matter, all led the Commission to dismiss this matter as to RIJTR.

### C. Conclusion

The Commission has decided to dismiss this matter and close the file for the following reasons. First, RIJTR appears to have made reasonable efforts to prevent its employees and consultants from endorsing candidates by establishing policies, conducting training, and requiring its agents to sign a statement acknowledging the prohibition of such activity. Second, the single e-mail constituted a very limited use of corporate resources and imposed marginal cost to RIJTR. Third, upon discovery of the e-mail endorsement, RIJTR took immediate corrective action to retract the e-mail, took disciplinary action as to Mr. Pezzella, and promptly reported the matter to the Commission. Fourth, RIJTR undertook a full internal investigation of the incident and provided the Commission with a complete report of the investigation. Fifth, as the company was

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<sup>3</sup> Mr. Pezzella's statement in the e-mail to "[p]lease vote to elect . . . Sheldon Whitehouse as United States Senator" constitutes express advocacy under the Commission's regulations. *See* 11 C.F.R. § 100.22(a). In issuing the e-mail, Pezzella acted as an agent of RIJTR. *Cf.* 11 C.F.R. § 109.3 (defining agent, albeit with regard to coordinated and independent expenditures, as "any person who has actual authority, either express or implied, to engage in any [number of specified activities] on behalf of the specific persons").

1 set up for the limited purpose of promoting the casino-resort ballot initiative, it is unlikely to be  
2 involved in future federal elections.<sup>4</sup>

3 Given the combination of all of the above factors (including the presence of a compliance  
4 program, the one-time nature of the violation combined with immediate corrective action, and  
5 prompt disciplinary action and self-reporting), the Commission determined that dismissal as to  
6 RIJTR is the most appropriate resolution of this matter and that there is no need to use  
7 Commission resources to negotiate a conciliation agreement in this matter. *See* Commission  
8 Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the  
9 Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007). A dismissal is also consistent with  
10 the Commission's Statement of Policy Regarding Self-Reporting of Campaign Finance  
11 Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16695 (April 5, 2007), which states that  
12 persons or organizations which self-report violations of the FECA and cooperate with any  
13 resulting Commission investigation may receive appropriate consideration, which may include a  
14 reduced civil penalty, no civil penalty or, even a Commission determination to take no action.<sup>5</sup>

15 For all of the above reasons, the Commission has decided to dismiss this matter as to  
16 Rhode Islanders for Jobs and Tax Relief, Inc.

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<sup>4</sup> Available information from the Rhode Island Secretary of State Office shows that RIJTR is an active corporation, as of January 16, 2007. However, RIJTR's representative confirmed by telephone that the company is defunct and has no ongoing activities.

<sup>5</sup> The factors the Commission may consider include the type of violation (knowing and willful or inadvertent mistake), the magnitude of the violation (one time event or ongoing pattern), the origin of the violation (intended to further the organization's interests or only the interests of an individual), the investigative or corrective action undertaken (including notification of affected parties and disciplinary action against responsible individuals), post-discovery compliance procedures (to prevent recurrence), the level of disclosure, and the extent of the cooperation with the Commission. *Id.* at 16696-97.